IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.344 OF 2007

VISHWAS SAKHARAM KALEKAR
ADULT,R/AT & POST KALMAN
TAL.SOUTH SOLAPUR,
DIST. SHOLAPUR ... PETITIONER.

VS.

1. THE CHIEF OFFICER,
ZILLA PARISHAD
SOLAPUR
2. DY.ENGINEER, RURAL
WATER SUPPLY,
SUB-DIVISION, ZILLA
PARISHADK COMPOUND,
DIST. SOLAPUR ... RESPONDENTS.

SAU. SEEMA SARNAIK FOR THE PETITIONER.

CORAM : A.P. DESHPANDE, J.
DATE : January 16, 2007.

JUDGMENT

1. The Petitioner was appointed as a cleaner on a water tank, in the employment of the Respondent Zilla Parishad for a period of six months, with effect from 22.11.1990 and after expiry of the said temporary appointment, under contract, after a gap of about five day, another appointment Order was issued, yet again for a further period of six months, which expired on 21.11.1991 and the petitioner came to be discontinued.

2. Aggrieved by the discontinuance of the Petitioner, after having put in about one years' service, he filed complaint before the Labour Court under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act,1971 (hereinafter referred to as the MRTU & PULP Act). The Labour Court allowed the complaint by holding that the has respondent engaged in an unfair labour practice, whereas the Revisional Court has reversed the Order passed by the Labour Court allowing the Revision and rejected the Complaint.

3. The learned Counsel for the Petitioner submits that the Revisional Court ought not to have reversed the finding recorded by the Labour Court about commission

of the unfair labour practices by the respondent. What is relevant to be noted is that both appointment orders, under which the petitioner had worked, squarely stipulate the terms of the appointment, by making it clear that the appointment is temporary in nature and for a period not exceeding six months. The Order further makes it clear that the said appointment will not vest the petitioner with any right qua the post and service tenure of respondent could not be considered for any purpose whatsoever. The Order further stipulates that one of the conditions of the appointment of the Petitioner that he will not have any right to claim continuity in services consequent upon the said Order of appointment. The Industrial Court held that the termination does not amount to "Retrenchment" as the same is clearly covered by Section 2(oo)(bb). Reliance has been placed on the decision of the Apex Court reported in (2004) 8 SCC 262 and to be more precise paragraph 20 thereof. The Apex Court has observed that mere completion of 240 days of continuous service in a year may not by itself be a ground for directing an order of regularization. It is also not the case of the respondents that they were appointed in accordance with the existing rules. No direction for regularization of their services, therefore, could be issued.

4. In the present case, the Chief Executive Officer of Zilla Parishad had no power and authority to make a substantive appointment to the post in question and the appointment of the petitioner was on ad-hoc and if regularisation is granted, the same would amount to legalising the back door entry.

In this view of the matter, the impugned Order calls for no interference. The writ petition deserves to be dismissed. Hence, the Writ Petition is summarily dismissed.

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[A.P.DESHPANDE, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLAGE SIDE

WRIT PETITION NO. 344 of 2007

DATE OF DECISION : January 16, 2007.

For approval and signature :

The Hon'ble Mr. Justice A.P.Deshpande :

1. **Whether Reporters of Local Papers may be allowed to see the judgment?**

2. **To be referred to the Reporter or not ?**

3. **Whether Their Lordships wish to see the fair copy of the judgment?**

4. **Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?**

5. **Whether it is to be circulated to**

the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Goa & Aurangabad Office?

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